

MOORE, Commissioner, Dissents:

I respectfully dissent from my colleagues' decision to approve the construction and operation of the Tenaska plant based on the record before us. My disagreement is limited to the majority conclusions with respect to air quality.

In our Order entered January 16, 2002,¹ we remanded this matter to the Hearing Examiner to consider a number of issues. One of our areas of greatest concern was the environment in general and air quality in particular. We required a cumulative impact air analysis. More specifically, we directed that evidence be presented showing the current quality of the air in the area surrounding the proposed Tenaska 900 MW electric generating facility ("Facility") and the impact on that air quality of the Facility and other proposed facilities. We found that it was not enough simply to conclude that the Facility might be adding what was described as an insignificant amount of pollution to the atmosphere. We needed to know where on the continuum of air quality the area falls. We needed to know whether the pollution from these facilities would be added to air where pollution concentration levels were 20% or 80% of the allowed limits.

At the hearing on remand, Tenaska presented data to reflect current air quality in the area surrounding the Facility (Fluvanna County and the surrounding counties) and the impacts of up to 23 proposed power plants (including the Tenaska plant) on this air quality. Tenaska, the Department of Environmental Quality ("DEQ"), and the Commission Staff concluded that the methodologies used to develop the data were reasonable and that it was appropriate to use the data for the cumulative impact

¹ *Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Doc. Con. Cen. No. 020120072 (Order Jan. 16, 2002) ("January 16 Order").

air analysis. In his Report issued April 3, 2002,² the Hearing Examiner agreed and, based on these methodologies and data, concluded that adding the impact of the Tenaska Facility to up to 22 other proposed plants "will not materially degrade existing air quality in Fluvanna County and surrounding counties, and will not cause a violation of any NAAQS."³ The Hearing Examiner recommended that construction and operation of the Facility be approved. Without discussion of the air quality issues, the majority adopted the Hearing Examiner's findings and his recommendation to approve the construction and operation of the Facility.

Unfortunately, the analysis upon which the findings and recommendation are based failed to focus adequately on current air quality and the amount of the increase in pollution concentrations. A 2% increase in pollution concentration may not be significant if the current concentration is only 20% of the NAAQS, but it is significant if the current air quality already contains pollution concentrations of 85% to 90% of the allowed limit. That distinction was one of the very reasons we required data on current air quality. We need to know current pollution concentration levels before we can properly evaluate the impact of additional levels. This issue is, essentially, ignored by the Hearing Examiner and the majority who approved the plant based on the fact that increased pollution could be defined as "insignificant" and that a NAAQS was not exceeded under the analyses. In addition, although not stated, the analysis must assume that the environment and the health of Virginia citizens are "safe" as long as pollution concentration levels stay below the currently-enforced NAAQS. Such is not the case; concentration levels below these NAAQS do matter, particularly for several of the pollutants involved here. Further, data was not presented with respect to revised standards for the two pollutants with the highest current

² *Application of Tenaska Virginia Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, Doc. Con. Cen. No. 020420015 (Report on Remand of Michael D. Thomas, Hearing Examiner April 3, 2002) ("Remand Report").

³ Remand Report at 27. "NAAQS" refers to the National Ambient Air Quality Standards which, pursuant to the Clean Air Act, the EPA was required to establish for certain pollutants that are deemed to be harmful to public health and the environment.

concentration levels. For the reasons stated below, the Tenaska Facility should not be approved based on the record that is before us.

Tenaska presented its air quality data through a report prepared by Trinity Consultants.⁴ The results of the Trinity study were summarized in a series of tables and graphs.⁵ They show the currently-enforced NAAQS and the existing background (or current) air quality that reflects the highest concentrations of the particular pollutant at the monitoring station that best represents the air quality in Fluvanna County and surrounding counties.⁶ For most pollutants, these tables also show the predicted contributions of the Tenaska facility alone, and of the Tenaska facility along with 22 other proposed plants, to this current, or background, air quality.⁷

The data in these tables are important for several reasons. First, they provide the best available indication of the current air quality in the area that will be impacted by the Facility, or, in other words, where on the continuum of air quality this area falls. Second, the data show the possible impact of the Tenaska plant alone and the cumulative impact of Tenaska, along with certain other proposed plants, on the air quality in the area. The data are telling in several respects. First, current concentration levels in

⁴ Tenaska's witness, Dr. Greg Kunkel, filed direct remand testimony which was marked at the remand hearing as Exhibit 16 ("Remand Hearing Exhibit 16"). The Trinity Consultant's Study, entitled "Cumulative Impacts Analysis-- Tenaska Virginia Generating Station," was presented as Exhibit 3 of Remand Hearing Exhibit 16 (hereinafter, the "Trinity Report").

⁵ Trinity Report, Part 1.

⁶ Current air quality and pollution levels were not based on readings in Fluvanna County because no monitoring device was available in the county for the criteria pollutants. A surrogate monitoring station was selected for each pollutant based on whether the monitoring station was in a rural or urban area and the distance between the station and the Facility. *See* Trinity Report, Part 2; Remand Hearing Exhibit 16 at 11; Tr. 457-59. The adequacy of this method and the resulting data were challenged by public witness Holmes on behalf of the Piedmont Environmental Council. Tr. 343-44. Mr. Holmes, however, had not read the Trinity Report (Tr. 354) and could offer no specifics concerning air quality in the area. (Tr. 343-44). While there may be legitimate issues with respect to the current air quality in the area, based on the record before us at this time, we must work with the data presented.

⁷ Trinity Report, Tables 1-3, 1-4 at pp. 1-9, 1-10. Four of the other 22 "proposed" plants have been completed. *See* Trinity Report at Table 3-1 at pp. 3-3, 3-4 (ID Nos. 13, 19, 20, 21).

the area for several pollutants appear to be less than 25% of their NAAQS. For example, in Fluvanna and surrounding counties, the NO₂, SO₂, and one-hour CO analyses show that current levels are between 15% and 25% of the NAAQS.⁸ However, for PM₁₀ and the eight-hour CO analyses, the background or current air quality is between 55% and 65% of the maximum allowed concentrations.⁹ In all cases, the impact of the Tenaska Plant alone is substantially less than 1% of the allowed NAAQS.¹⁰ The Applicant failed to explain why we should not be concerned when concentration levels are 50% to 60% of the allowed limits before the addition of any new facilities. The current concentration level in the area is 57% of the allowed limit under the 24-hour PM₁₀ analysis, and, under the annual PM₁₀ analysis, the current level is 64% of the NAAQS.¹¹ Of further concern is the fact that, according to the Trinity Report, the impact of the 23 plants on the 24-hour PM₁₀ analysis is to increase the concentration from 86 µg/m³ to 94.05 µg/m³, almost a 10% increase.¹² These issues were not analyzed by the Applicant. Rather than discuss the impact of these data, the focus was limited to the fact that the study showed that the combination of existing air quality and the impact of the proposed plants **"will not cause or contribute to a violation of the NAAQS."**¹³

The Applicant's analysis and conclusions with respect to ozone are, as they were with other pollutants, that neither Tenaska alone, nor Tenaska and the other proposed plants, will cause a violation of the ozone NAAQS in Fluvanna County or the surrounding counties.¹⁴ Such a conclusion may be correct, but it should not form a basis upon which to approve the Tenaska Facility given the evidence of

⁸ Trinity Report, Table 1-3, p. 1-9.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at p. 1-8 (bold in original).

¹⁴ *Id.* at p. 4-3.

ozone concentration levels and the impact additional plants may have on those levels. First, areas of Virginia are currently classified as "nonattainment," that is, the concentration levels are above the currently-enforced standard of 120 parts per billion ("ppb") over a one-hour period.¹⁵ The current ozone concentration level for the Fluvanna area was established by Trinity Consultants at 104 ppb.¹⁶ That is approximately 87% of the NAAQS of 120 ppb.¹⁷ According to the Trinity Report, assuming only 16 of the proposed 23 plants are completed, 2.5 ppb would be added, or 2.4% of the current concentration level.¹⁸ This increase would move the concentration level closer to 90% of the NAAQS. If all 23 plants are assumed to be built, then the concentration level would be 90% of the limit.¹⁹

With respect to ozone and other pollutants, the Applicant stated that we should take into account other factors that could reduce pollution levels such as the NO_x SIP call/allowance trading, acid rain programs, and other state and federal plans.²⁰ The Company also reiterated often that all of the data were "worst case" scenarios.²¹ In addition, the Company noted that the study assumed 23 plants would be built when perhaps only six or seven will ultimately be constructed.²² The Company repeatedly reminded the Hearing Examiner how "conservative" all of the data were from almost every point of view. These points are well made and noted by the Hearing Examiner and the majority. We must, however, consider the data. When the data are high, we cannot disregard them because they

¹⁵ See Tr. 543.

¹⁶ Trinity Report, p. 4-3. For the Fluvanna area, there was no monitor available so a surrogate was used that Trinity Consultants found was the most appropriate for the area. See *supra* note 6.

¹⁷ Trinity Report, p. 4-3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Tr. 483-91; Remand Hearing Exhibit 16 at 17-21.

²¹ See, e.g., Tr. 447-48, 467; Remand Hearing Exhibit 16 at 16; see also Trinity Report at pp. 1-6, 2-7.

²² Remand Hearing Exhibit 16 at 16; Tr. 481.

were "conservative." The Company also repeatedly noted how appropriate and reasonable the data were.²³ Further, with respect to the number of future plants modeled, four of the 23 "proposed" modeled plants have already been completed; moreover, future industrial pollution will not come solely from power plants. The 23 plants represent a surrogate for industrial pollution in the foreseeable future, not just electric generating plants. While it is likely that not all of these generating plants will be built, other plants will be. Finally, the Applicant presented the data as a basis for our decision and the DEQ, Staff, the Hearing Examiner,²⁴ and, presumably, the majority agreed that it should be.

While the record contains significant useful information, critical data are not included and important issues were not analyzed. Current pollution concentration levels based on revised NAAQS were not provided for ozone and particulate matter. Also, data for the proposed plants based on these new standards were not presented. Further, there was little or no discussion in the record, the Remand Report, or the majority order with respect to current concentration levels of the criteria pollutants, the background of the standards (NAAQS) relied upon, the dangers of the pollutants being studied, or the revised NAAQS for several pollutants adopted in 1997.

The Clean Air Act requires the Environmental Protection Agency ("EPA") to establish the NAAQS to protect the public from adverse health effects of certain pollutants. According to the EPA, ground-level ozone is dangerous to human health and negatively impacts flora as well. Ozone can irritate lung airways and cause inflammation; repeated exposure to ozone pollution may cause permanent lung damage. Ozone also interferes with the ability of plants to produce and store food which makes them susceptible to disease, insects, other pollutants, and harsh weather.²⁵ Also, and of particular

²³ See, e.g., Tr. 446-48, 495-96; Remand Hearing Exhibit 16 at 13.

²⁴ Remand Report at 26-27.

²⁵ See <http://www.epa.gov/air/urbanair/ozone/hlth.html>; <http://www.epa.gov/ttn/oarpg/naaqsfin/o3fact.html>. See also *Nat'l Ambient Air Quality Standards for Ozone; Final Rule* 62 Fed. Reg. 38,855 at 38,856, 38,859-67 (July 18, 1997) (codified at 40 C.F.R. §§ 50.9, 50.10 (1999)) ("*Ozone NAAQS Final Rule*").

importance, even at very low levels, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis.²⁶ The EPA has concluded that ozone is a non-threshold pollutant, a pollutant that may cause adverse health effects at any level.²⁷ It is not possible, according to the EPA, to identify an ozone concentration level at which it can be concluded with confidence that no adverse effects are likely to occur.²⁸

The currently-enforced one-hour ozone NAAQS of 120 ppb has been in effect for more than 20 years.²⁹ Reviews of the standard were completed in 1993 and 1997.³⁰ In its 1997 review, based on available scientific evidence linking exposure to ozone to adverse health and welfare effects at levels allowed by the current ozone standard, the EPA revised the O₃, or ozone, standard.³¹ The EPA summarized the new eight-hour, 80 ppb standard and its benefits as follows:

The current 1-hour primary standard is replaced by an 8-hour standard at a level of 0.08 parts per million (ppm) with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O₃ concentrations measured at each monitor within an area. The new primary standard will provide increased protection to the public, especially children and other at-risk populations, against a wide range of O₃-induced health effects, including decreased lung function, primarily in children active outdoors; increased respiratory symptoms, particularly in

²⁶ *Id.*

²⁷ *Ozone NAAQS Final Rule* at 38,863, 38,864, 38,867.

²⁸ *Id.*

²⁹ See <http://www.epa.gov/ttn/oarpg/naaqsfin/o3fact.html>.

³⁰ *Ozone NAAQS Final Rule* at 38,857-58. The EPA's 1997 revised standards for ozone and PM were recently upheld by the United States Court of Appeals, District of Columbia Circuit. See *Am. Trucking Ass'n. v. United States*, 283 F.3d. 355 (D.C. Cir., Mar. 26, 2002) (Nos. 97-1440, 97-1548, 97-1553, 97-1441, 97-1551, 97-1555, 97-1546, 97-1552, 97-1559) ("ATA Remand Decision").

³¹ *Ozone NAAQS Final Rule* at 38,859, 38,864; <http://www.epa.gov/ttn/oarpg/naaqsfin/o3fact.html>. The current ozone standard is the one-hour 120 ppb NAAQS.

highly sensitive individuals; hospital admissions and emergency room visits for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma; inflammation of the lung, and possible long-term damage to the lungs.

Ozone NAAQS Final Rule at 38,856.

When asked, Company witness Dr. Kunkel discussed the revised standard for ozone briefly.³² He acknowledged the revised EPA standard, but noted that it had been subject to long legal challenges and it was not certain when it might be implemented.³³ With respect to the revised standard, however, Dr. Kunkel concluded as follows: “There’s a general anticipation in the environmental community that it may be implemented and it’s expected to be implemented.”³⁴ Shortly after the remand hearing, the Circuit Court of Appeals for the District of Columbia upheld the eight-hour standard.³⁵ We must assume that the EPA will begin implementation in the near future. Dr. Kunkel also acknowledged that the number of nonattainment areas in Virginia is expected to increase under the new standard.³⁶ Although the revised standard of 80 ppb is significantly lower than the currently-enforced standard of 120 ppb, the monitoring period is lengthened to eight hours. The monitored concentration levels over an eight-hour period are expected to be below those for a one-hour period. Although the revised standard was established in 1997 and the environmental community “expected” it to be implemented, Dr. Kunkel did not present current concentration levels under the revised standard for the area in question. He did state that it is not anticipated that Fluvanna or the surrounding counties would be in nonattainment status under the new standard, though he presented no analysis to support his “anticipation.”³⁷

³² Tr. 543-44, 568-70, 582.

³³ Tr. 568.

³⁴ *Id.*

³⁵ See generally *ATA Remand Decision*, *supra* note 30.

³⁶ Tr. 569.

³⁷ *Id.*

We cannot simply allow ozone levels in the Commonwealth to continue to climb because this plant or a series of facilities does not cause a "violation" under the currently-enforced limits. According to the Trinity Report, ozone levels in the Fluvanna area are approaching the current limit. We do not know how close we may now be to the revised standard. Certainly we must have this information before we approve a facility that will emit tons of pollutants that contribute to the creation of ozone. There can be no question that the Tenaska plant will increase ozone concentrations; no one even suggested otherwise. Tenaska's witness, Dr. Kunkel, said it well when he said "any emissions are emissions. . . . if you have emissions of volatile organic compounds or oxides of nitrogen, . . . some contribution is made to ozone in the atmosphere under certain conditions."³⁸ DEQ estimates that the Tenaska Plant will emit some 577 tons of NO₂ into the atmosphere each year,³⁹ of which 90 tons will be during the ozone season of May through September.⁴⁰ Such emissions, which may contribute to an already significant level of ozone, should not be allowed without knowing current concentration levels under the new standard.

Consideration of particulate matter raises concerns similar to those discussed with respect to ozone. First, as noted above, the PM₁₀ level is already at 57% of the allowed limit under the 24-hour PM₁₀ analysis⁴¹ and the concentration would increase almost 10% (from 86 µg/m³ to 94.05 µg/m³) if all 23 proposed plants were constructed. That is a significant increase. Second, like ozone, there are new standards that will apply to particulate matter, those dealing with fine particulate matter -- the PM_{2.5} standards. These standards, also adopted in 1997 and recently upheld, establish new annual and daily

³⁸ Tr. 480.

³⁹ Tr. 544.

⁴⁰ *Id.*

⁴¹ The current annual PM₁₀ concentration level is at 64% of the NAAQS. Trinity Report, Table 1-3.

standards for fine particulate matter.⁴² In adopting these new standards, the EPA concluded, as it did with ozone, that they were necessary because there were particulate matter-related health effects in areas where the current standards were being met.⁴³ Further, the EPA stated that it could not determine whether there is a threshold concentration for particulate matter below which PM-associated health risks are not likely to occur.⁴⁴ Also, as with ozone, the EPA has determined that particulate matter can contribute to significant health problems. The health effects from fine particulate matter include premature death and increased hospital admissions and emergency room visits; increased respiratory symptoms and disease; decreased lung function; and alteration in lung tissue and structure and in respiratory tract defense mechanisms.⁴⁵ It does not appear that the PM_{2.5} particulate standards were addressed by the Applicant; nor was it explained why they were not addressed. Yet, like the revised ozone standard, they have been known since 1997, recently upheld, and should be implemented in the near future. We do not know either the current concentration levels of PM_{2.5} in the area, or the impact the Tenaska Facility, or any other proposed facility, may have on air quality in the Fluvanna area. We do not know whether this area is already close to the revised NAAQS or whether it might exceed the limits in the near future.

Dr. Kunkel explained how revised ozone standards would be implemented;⁴⁶ similar implementation may apply to the new PM_{2.5} NAAQS. First, the EPA and Virginia would determine nonattainment areas. For ozone, Dr. Kunkel acknowledges that they will increase in Virginia, though he

⁴² See *Nat'l Ambient Air Quality Standards for Particulate Matter; Final Rule*, 62 *Fed. Reg.* 38,651 (July 18, 1997) (codified at 40 C.F.R. § 50.7 (1999)) ("Particulate Matter NAAQS Final Rule"); *ATA Remand Decision supra* note 30.

⁴³ *Particulate Matter NAAQS Final Rule* at 38,652, 38,655-57.

⁴⁴ See *Nat'l Ambient Air Quality Standards for Particulate Matter; Proposed Rule*, 61 *Fed. Reg.* 65,637 at 65,650-53. (Dec. 13, 1996).

⁴⁵ See e.g., *Particulate Matter NAAQS Final Rule* at 38,655-57; <http://www.epa.gov/ttn/oarpg/naaqsfin/pmhealth.html>.

⁴⁶ Tr. 569-70.

does not anticipate that the Fluvanna area will be classified as nonattainment. There was, as noted above, no evidence of current concentration levels of PM_{2.5} for the area. Once nonattainment areas are established, Virginia must then devise a plan to bring the areas in attainment for a given pollutant such as PM_{2.5} or ozone. This might include, for example, regulation of power plant or automobile emissions. After the plan is approved by the EPA, it is then implemented, and the Commonwealth is given time to bring the areas into attainment. The process of designation, planning, and compliance will take years. In the meantime, citizens in nonattainment areas could be exposed to increased, and perhaps, unsafe levels of pollution.

We are required by the statutes to make judgments concerning certain factors in determining whether to approve the construction and operation of the Tenaska Facility. These include considerations related to reliability, competition, rates, economic development, impact on the environment, and whether the facility is otherwise contrary to the public interest.⁴⁷ As part of our consideration of the environment, as stated in our January 16 Order, we must be guided by Section 1 of Article XI of the Virginia Constitution:

[I]t shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Consideration of the environment involves more than ensuring that all required approvals have been obtained. For example, having a required permit from DEQ or not causing a violation of a NAAQS does not end the inquiry with respect to air quality issues. If such were the case, there would be no need for us to consider the effect of the Facility on the environment to any extent. Rather, under

⁴⁷ See January 16 Order at 11-14.

the law,⁴⁸ we are to weigh the effect of the Facility on the environment along with other factors and determine whether to approve the construction and operation of the plant.

In this case, we must consider the factors prescribed by the statutes. The Tenaska Plant will not harm the reliability of the system and probably will help it, although the help may not be there when it is most needed.⁴⁹ Since Tenaska is not affiliated with an incumbent utility, the plant should help competition in the region to some extent.⁵⁰ The Facility should not increase rates in Virginia and will bring tax dollars and perhaps some economic development to the Fluvanna County area.⁵¹ This plant, which will last for decades,⁵² is not obligated to provide one kWh to anyone in Virginia; indeed, we do not know who will buy the output of the plant or even who the "tolling contract" is with.⁵³

The majority has, in effect, checked-off the environmental concerns because the Applicant has a PSD permit from the DEQ, and the cumulative impact study does not show a "violation" under

⁴⁸ Sections 56-46.1 A and 56-580 D of the Code of Virginia were amended earlier this year, effective July 1, 2002. Also, the DEQ was specifically authorized to consider the cumulative impact of new and proposed electric generating facilities in the Commonwealth on NAAQS. 2002 Va. ch. 483. With these amendments, approvals or permits by the DEQ and other agencies are deemed to satisfy certain environmental requirements of §§ 56-46.1 A and 56-580 D with respect to matters that are governed by the permit or approval or are within the authority of, and were considered by, the governmental agency, and the Commission is not to impose additional conditions with respect to such matters. These new provisions are not yet effective and are yet to be interpreted. These revisions do not alter our obligations in this proceeding. In addition to the revisions not yet being effective, the DEQ has made clear in this case that it did not consider any cumulative impact analysis in granting the Tenaska PSD permit on January 11, 2002, a week before our January 16, 2002 Order was issued. See Trinity Report, Appendix D, "*Virginia Department of Environmental Quality (VDEQ) Response to Public Comments Regarding Tenaska's Proposed Fluvanna Power Generation Facility*" at 2-5, 7-8. Further, the DEQ concluded in its November 6, 2001 comments to the Hearing Examiner's October 23, 2001 report that considering factors other than modeling significance "would put DEQ in the position of being 'arbitrary and capricious' relative to the equitable application of PSD procedures." Doc. Con. Cen. No. 011120184.

⁴⁹ January 16 Order at 14-15.

⁵⁰ *Id.* at 15.

⁵¹ See Remand Report at 5-7, 24-27.

⁵² The nearby "Bremo" plant is approximately 50 years old.

⁵³ Remand Report at 10.

currently-enforced NAAQS. The majority failed to weigh the environmental data against the modest advantages of the Facility. The majority also failed to consider adequately current pollution levels and has ignored EPA's 1997 findings and revised standards. On this record, we cannot approve this plant and discharge our duties under §§56-46.1 A and 56-580 D of the Code of Virginia, and Article XI, Section 1 of the Constitution of Virginia.

While we know more than before the remand, the record does not present a basis to approve the construction and operation of the Tenaska facility. To the contrary, the record raises new concerns with respect to ozone and particulate matter that have not been addressed. Of the pollutants examined in this proceeding, ozone and particulate matter have the highest current concentration levels in the relevant area. Tenaska's data show that, before considering the addition of Tenaska or any other new facility, ozone and particulate matter are already at 87% and 64%, respectively, of current EPA limits. Tenaska and other proposed plants will only increase these concentration levels. Further, the EPA has determined that the current limits are not adequate to protect the health and welfare of the public. It found, based on scientific data, that it could not determine a safe level for these pollutants. The EPA also found adverse health effects from ozone and particulate matter in areas where the current standards were being met. Accordingly, in 1997, to protect the public, the EPA established new tests and standards that are more stringent than those currently enforced. This record contains no data under these new standards. Significantly, there are no data showing that the Fluvanna area is not already exceeding the new limits without considering Tenaska or any other new facility. The record contains no indication of the health risks of current pollution levels based on the EPA's 1997 findings and new standards. This record contains no explanation of why data were not presented.

Before Virginia approves a power plant that will last for decades and each year will put hundreds of tons of pollutants into the atmosphere in an area where pollution levels are already close to current limits, data and information under the new EPA standards should be gathered and examined.

That has not happened and, with the majority's action today, it will not happen. As a result, the environment of the Commonwealth and the health of her citizens are at risk.